IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.37822 of 2002
& W.P.M.P.No.56741 of 2002
& W.V.M.P.No.676 of 2003

1. Union of India, Rep. by
The General Manager,
Heavy Vehicles Factory,
Avadi, Chennai-600 054.

2. The Ordnance Factory Board,
rep. by the Director General
Ordnance Factories, Auckland Road,
Calcutta.

3. The Secretary,
Min. Of Defence,
Govt. of India, New Delhi. .. Petitioners

vs.

1. Central Administrative Tribunal,
represented by its Registrar,
High Court Buildings,
Chennai-600 104.

2. A.P.Mohandas .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

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For petitioners : Mr.K.Veeraraghavan, ACGSC
For respondents: R-1 Tribunal
Mr.S.Sadhasharam for R-2

ORDER

R.SUDHAKAR,J.

The prayer in the writ petition is for issuance of a writ of certiorari, calling for the proceedings of the first respondent dated 5.7.2002 made in O.A.No.796 of 2001 on the file of the first respondent and quash the same.

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2. Brief facts of the case are as follows:

The writ petition has been filed by the Joint General Manager in the office of the Heavy Vehicles Factory, Avadi for and on behalf of all the petitioners. According to the petitioners, Shri.A.P.Mohandas, the applicant in O.A.No.796 of 2001, the second respondent herein, was appointed as Trainee in Artisan Training School (HVF) from 15.6.1994 and was made to undergo Journeymanship training from 1.7.1965. After completing the abovesaid training, he was categorised as Tool Maker 'B' with effect from 1.8.1966 as he had secured less than 55% marks in the qualifying examination. However, the second respondent was promoted as Mach 'A' with effect from 26.8.1970 and he was categorised as Mach (M) with effect from 1.12.1974. He was further promoted as Mach Spl. with effect from 16.4.1974 and thereafter, promoted as Highly Skilled Grade-II with effect from 12.6.1982 and re-designated as Highly Skilled Grade-I with effect from 16.11.1982. Subsequently, Shri.A.P.Mohandas was granted notional promotion to the post of Supervisor 'B' (Technical) on 10.5.1993 with effect from 21.7.1971 and re-categorised as Chargeman Grade-II (Technical) with effect from 10.5.1993. The abovesaid factual position is not disputed.

3. The second respondent was given notional promotion to the post of Supervisor 'B' (T) with effect from 21.7.1971 by order dated 10.3.1997. According to the second respondent, after the order dated 10.3.1997, his seniority in the grade of Chargeman-II (Tech) should also have been revised so as to enable him to be promoted to the next higher post. According to the second respondent, he had made several representations. He was not considered for subsequent promotion. Therefore, he filed O.A.No.796 of 2001 seeking promotion to the grade of Assistant Foreman in the pay scale of Rs.6,500-10,500 on par with his juniors.

4. Learned counsel for the second respondent contended that one V.N.Dhanapal was promoted as Assistant Foreman with effect from 21.2.2000 and the said person was junior to the second respondent in the grade of Supervisor 'B' (Technical) and accordingly, the second respondent is entitled for promotion to the grade of Assistant Foreman with effect from 21.2.2000.

5. The contention made by the second respondent is repelled by the petitioners-Department on the ground that the second respondent and similarly placed persons were given appropriate seniority in the grade of Supervisor 'B' (Technical) with effect from 21.7.1971 by way of notional seniority and were placed en-bloc below those who were appointed on and before 10.5.1993. According to the petitioners, the Ordnance Factories come under the over-all control of the Department of Defence Production, Ministry of Defence, having its own training schools. The selected candidates are trained in the training institute. On

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successful completion of training as Journeymanship, they are appointed to the respective posts in the industrial establishment according to the vacancies available in the factory. Upto the year 1976, the position was that the individuals who secured more than 55% marks (approximately) in the qualifying examination were appointed as 'A' Grade Workman, whereas the individuals who have secured less than 55% marks in the qualifying examination were appointed as 'B' Grade Workman. Over the period of time, the individuals who were graded in 'A' Grade were able to move up in the hierarchy due to the efficiency and merit. However, the individuals in Grade 'B' could not be promoted to 'A' Grade even though they were serving for several years. The employees in Grade 'B' nurtured grievance that they were not getting promotion like the persons working in 'A' Grade only for the reason that they are not able to secure more marks than 'A' Grade Workmen. It is also their grievance that most of them were of the same batch at the time of original recruitment. To redress the grievance of the workmen in Grade 'B', a Sub-Committee under the Chairmanship of Shri.R.K.Chellam, was appointed on 20.5.1977 and the recommendations of the Sub-Committee was examined and accepted with partial amendment on 1.7.1978. As per the report of the Committee, Ex-Journeymen who were originally graded as 'B' Grade prior to 1976, were to be granted notional seniority in 'A' Grade from the date of six months later than their date of original gradation of 'B' Grade for the purpose of promotion to Supervisor 'B' only and not for further promotion. After grant of notional seniority in 'A' Grade, a seniority list of 'A' Grade Workmen (including originally graded as 'B' Grade Workmen) had to be drawn and if any junior is promoted to the post of Supervisor 'B' (T), then those 'B' Grade workmen who had been given notional seniority were to be promoted to the post of Supervisor on the same date as that of such juniors. By virtue of the recommendation made by K.G.Pappachan Committee-vide Order dated 18.1.1995, the recommendation of the Chellam Committee was made applicable to Heavy Vehicles Factory (HVF) where the second respondent is working. It is based on the Pappachan Committee's report the notional seniority to Ex-Journeymen Grade 'B' was granted. It was made clear that the benefit of notional seniority was to be confined to such of the employees whose line of promotion had been to Supervisory cadre only.

6. According to the petitioners, the second respondent along with 346 Ex-Journeymen were the beneficiaries of the order dated 19.4.1993 and 18.1.1995, namely Pappachan Committee and promoted as Supervisor 'B' (T) on 10.5.1993 and granted notional seniority with effect from 21.7.1971. The notionally placed Supervisors 'B' (T) have been re-designated as Chargemen Grade-II (T) with effect from 10.5.1993 against the direct recruitment quota. The second respondent has accepted the notional promotion and had drawn the arrears of pay and therefore, deemed to

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have been appointed as Chargeman Grade II (T) by transfer against direct recruitment quota. The seniority in the grade of Chargeman-II (T) is inter-se seniority among Supervisors regularly appointed and those notionally promoted. This is based on the ratio of the Supreme Court in the case of Paluru Ramakrishnan and others vs. Union of India and others (1989 (2) S.C.R. 92), whereby notionally promoted persons were placed en-bloc below the regularly appointed persons. It was therefore contended that the seniority list has been prepared as on 1.5.1997 and that the second respondent's place has been correctly placed along with similarly placed employees.

7. It is also the case of the petitioners that after drawing of the seniority list on 1.5.1997, one T.I.Achuthan and 15 others who were notionally promoted Ex-Journeymen, filed O.A.No.689 of 1997 to set aside the order of promotion based on the seniority list dated 1.5.1997. The Tribunal, by order dated 1.11.1999, upheld the seniority list dated 1.5.1997 based on the order of the Jabalpur Bench of the Tribunal, which was confirmed by the Supreme Court. In the order of the Tribunal in O.A.No.689 of 1997 dated 1.11.1999, the relevant portion is as hereunder:

> "When the above issue (notional seniority) was taken up before the Jabalpur Bench of this Tribunal in O.A.217/87, the Jabalpur Bench of this Tribunal it is judgment dated 14.2.1991 had held that persons who were given notional seniority cannot rank above persons who were regularly promoted earlier. Further, when the matter was taken in appeal before the Apex Court, the Hon'ble Supreme Court had occasion to examine the judgment of Jabalpur Bench of this Tribunal wherein the Supreme Court had upheld the judgment of the Jabalpur Bench of this Tribunal and had dismissed the Special Leave Petition. Thus, it leaves no room for any doubt about the manner in which the seniority has to be decided in respect of persons who were given notional seniority viz-a-viz persons who were promoted on a regular basis.
>
> ... Thus, it is clear that the implementation of Chellam Committee's recommendations for HVF also is based on the orders dated 6.7.1978 and 7.9.1992, cited supra. Further all the 346 Ex.Journeyman including the applicants have been granted notional promotion by HVF vide order No.379 Part II dated 18.3.1997. In view of this it is clear

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that the statement of the applicants set out in Para 6 of their rejoinder is in correct. Further having opted on 20.3.1997, cited supra, the seniority of the applicants is governed by the relevant orders dt.6.7.1978, 7.9.1992 (cited supra) and the order dated 23.8.1994 made in order No.571/A/I (GENL)/Ex-Journeymanship). Further as on 1.9.1992 the applicants were in the post of Supervisor-B (notionally promoted) and hence their promotion to Chargeman Grade-II is to be treated as appointment to Chargeman-II/Tech on par with other supervisors. Thus, they cannot claim seniority alone based on promotion order Part II No.807 dated 3.5.1993 and cannot also quote one order for seniority and the other order for notional benefits.

From the above it emerges that the official respondents have adopted a uniform practice to not only alleviate the difficulties of those workers who obtained only Grade-B and stagnated without any promotion prospects for a long time but also had given them the relief by way of notional promotion and other attendant benefits after examination of the whole issue in depth.

We also find that the issue has already been examined by the Jabalpur Bench of this Tribunal in the decision rendered in O.A.No.217/87 and the said decision has also been affirmed by the Apex Court.

Under these circumstances we find no reason to interfere with the action of the official respondents. In the result the OA is dismissed as devoid of merits with no order as to costs."

It is submitted that the appeal filed by five persons against O.A.No.689 of 1997 in W.P.No.2258 of 2001 before this Court was dismissed on 27.3.2001. Another O.A.No.79 of 1999 was filed for the same relief and was dismissed on 8.8.2000 and therefore, the second respondent has come up again by way of the present O.A. which is under challenge before this Court.

8. The main contention of the petitioners-Department is that the Tribunal failed to distinguish the issue of notional promotion and regular promotion and therefore, fell into grave error of law by comparing the case of

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V.N.Dhanapal, a direct appointee as Supervisor 'B' (Tech.) on 10.1.1972 and the Chargeman Grade-II (T) with effect from 1.1.1980 with that of the second respondent who was notionally promoted as Supervisor 'B' (T) on 10.5.1993 with notional seniority with effect from 21.7.1971 based on the Chellam Committee recommendations. In this regard, a comparative chart was filed and the same is set out below:

Notional promotee Shri.A.P.Mohandas		Regular promotee Shri.V.N.Dhanapal	
Apprentice Trainee Journeymanship	15.6.1964 08.7.1965	Turner 'C'	04.6.1964 (Rs.85-2-95-3-110) – Casual 3.12.64 – Regular
Tool Maker 'B'	01.08.1966 (Rs.110-3-131-4-143)	Fitter 'B'	20.09.1965 (Rs.110-3-131-4-143)
Mach 'B'	26.08.70 (Rs.125-3-131-4-155)	Mach 'A'	27.6.66 (Rs.125-3-131-4-155)
Mach Spl	16.4.1974 (Rs.320-6-326-8-390-10-400)	Mach Spl	20.1.68 (Rs.140-5-180)
Mach Spl (Modified)	16.4.1974	Supervisor 'B'	10.1.1972 (Appointment on selection) (Rs.150-5-175-6-205-EB-7-240)
Highly skilled	12.06.1982 (Rs.380-12-500-EB-15-560)	Supervisor 'A'	21.11.77 (Rs.425-15-500-EB-15-560-20-700)
Highly skilled-I (Re-designed)	16.11.1982	Chargeman-II	01.1.80 (Re-designation)
Supervisor 'B' (T) Notional Promotion 10.5.1993	21.7.1971	Chargeman-I	15.6.91 (Rs.1600-50-2300-EB-60-2660/(Rs.5500-9000)

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Apprentice Trainee Journeymanship	15.6.1964 08.7.1965	Turner 'C'	04.6.1964 (Rs.85-2-95-3-110) – Casual 3.12.64 – Regular
Chargeman-II/T	10.5.1993 (Rs.1400-40-1800-EB-50-2300/Rs.5000-8000)	Asst. Foreman (T)	21.2.2000 (Rs.6500-10500)
Chargeman-I (T)	01.04.2003 (Rs.5500-9000)	-	-
Retired on superannuation	31.10.2004	Retired on superannuation	29.02.2004

9. Learned counsel for the second respondent would submit that in view of the fact that the second respondent has been notionally promoted with effect from 10.5.1993 and the seniority should be from 21.7.1971, he should be placed above the said V.N.Dhanapal and the second respondent is entitled to be placed on the same footing if not on better position than that of V.N.Dhanapal. According to the second respondent, after giving notional seniority with effect from 21.7.1971, he claims seniority as against V.N.Dhanapal on the ground that the said V.N.Dhanapal was appointed as Supervisor 'B' only on 10.1.1972 and therefore, the second respondent has to be given the seniority above V.N.Dhanapal.

10. The issue for consideration now is whether the order of the Tribunal equating the second respondent with that of V.N.Dhanapal for the purpose of giving him the relief which he has prayed for in the Original Application, is maintainable.

11. From the chart produced by the petitioners extracted above, it is very clear that the appointment of the second respondent on 15.6.1964 was only as Apprentice Trainee, whereas V.N.Dhanapal was appointed as Turner 'C' – Casual – Regular, on 4.6.1964. Thereafter, by internal examination and career advancement, the said V.N.Dhanapal has reached the Supervisor 'B' Grade on 10.1.1972 by merit and seniority. However, the second respondent was given notional promotion with effect from 21.7.1971 in Supervisor 'B' Grade (T) by notional promotion order dated 10.5.1993. The difference between the date when the second respondent became Supervisor 'B' as against V.N.Dhanapal is obvious. Further, the second respondent was made Chargeman-II (T) on 10.5.1993, whereas V.N.Dhanapal was made Chargeman-II on 1.1.1980 itself and consequently, V.N.Dhanapal became Chargeman-I on 15.6.1991 and his seniority was drawn on All India basis and several persons thereafter have been

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included in the All India Seniority list. The claim of the second respondent arose only after 10.5.1993. In any event, in the order giving notional promotion dated 10.3.1997, which has been filed by the second respondent, the following conditions have been given thereunder:

> "2. Since the above individuals are granted "notional promotion" in the post of Sup.B (Tech) they are not entitled for arrears of pay.
>
> 3. The financial benefits will, however, accrue from the date of issue of O.F. Board Letter No.571/A/1 (Gen1,) (Ex-Journeymen) dated 07.08.1992."
>
> (Authority of O.F. Board, Calcutta letter No. No.571/A/1 (Gen.1) (Ex-Journeymen) dated 18.01.1995 and 24.04.1996."

12. On going through the factual details, it is clear that the second respondent's seniority starts from 10.5.1993 only, whereas, in the case of V.N.Dhanapal, he had already been designated as Chargeman-II on 1.1.1980. The question of seniority of the notional promotees like second respondent is well settled by the ratio of the Supreme Court in Paluru Ramakrishnan's case reported in 1989 (2) S.C.R. 92. The fact that he was notionally promoted in Supervisor 'B' (T) on 10.5.1993 with effect from 21.7.1971 does not give a right to the second respondent to be placed above all regularly promoted individuals and in particular, V.N.Dhanapal, who was regularly promoted as Supervisor 'B' (T). This factual position has been misconstrued by the Tribunal. The further contention of the petitioners that the seniority list dated 1.5.1997 has been successfully upheld by the Tribunal and by the High Court and the same has not been challenged, cannot be ignored. Seniority in the said list dated 1.5.1997 cannot be upset by giving a relief that has been sought for by the second respondent. There is merit in the contention of the petitioners that by the order of the Tribunal which is now impugned, if implemented, it will create chaotic situation in the matter of promotion in the Ordnance Factories, as the seniority is drawn on All India basis insofar as the Chargemen-I (Mechanical) is concerned. Further, a separate seniority list of Chargemen Grade-II (T) as on 1.5.1997 has been published, wherein, the name of the second respondent finds place at S.No.288. The seniority list of Chargemen-II is in respect of Heavy Vehicles Factory at Avadi, whereas the seniority list as that of V.N.Dhanapal, namely Chargeman-I, is of All India Seniority. Hence, both the persons cannot be equated on the same line as has been sought to be made by the Tribunal.

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13. Further, Chellam Committee report based on which the notional promotion is granted to the second respondent, clearly sets out the following conditions:

> "The approximate numbers of involvement who are affected is 485.
>
> Distribution factorywise and tradewise is also shown in annexure 'E'.
>
> The problem has become a little complicated because of the following considerations:
>
> 1) Since giving any benefit to Ex.Journeymen would involve giving a notional seniority/back dated promotion the effect of giving such benefit to Ex.Journeymen over other employees.
>
> 2) With reference to above it was also found that the number of persons who were previously 'C' grade and were subsequently promoted to 'B' grade and who are likely to be affected due to any special consideration being given to the particular batch under consideration.
>
> 3) An anomalous position has also arisen that in certain newer factories promotions have been faster and in certain factories, promotions have not been fast and on reduced scale. This has a resulted in junior people being promoted in some factories while senior people are still waiting for promotion in old factories."
>
> "Considering the expansion scheme of the existing factories and the requirement of new factories make the following suggestions for consideration:
>
> i) The effected involving above 483 individuals will be promoted to 'A' grade Appearing supernumeric posts to be created by DGOF by surrendering equivalent number of 'B' grade posts.
>
> ii) This will naturally result in higher number of 'A' grade posts than we have at present. This additional inclusion will be taken into consideration at the time when assessment is gone for 'A' grade posts

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against training schemes. The requirement of ATS boys for 'A' grade intake will be adjusted suitably by Hqrs. in a phased manner.

iii) They will be given notional seniority of ones year later than the date of Gradation. In other word for implementation purposes their notional seniority will rank one year later than the date on which they have been graded 'B' and taken into employment date as shown in their service record.

They have been representations received even from certain ATS employees not to give any special considerations as it will be detrimental to the subsequent batches though the same categories in some other places have agreed this. In other words there is difference of views within their own categories.

This notional seniority will apply only for promotion to Supervisor 'B' equivalent subject to conditions stipulated therein."

"v) This notional seniority will be applicable only for the first time for promotion as supervisor 'B' and equivalent and this notional seniority will not continue after such promotions for further promotional prospects. They only have to take their own turn for further promotion in NG/Supervisory grade with other existing staff they have been adjusted as Supervisor 'B' and equivalent.

vi) In case any individual refuses to go on transfer when he ordered he will Loose his notional seniority immediately. He will continue as 'A' grade and Reck in his seniority as on the date of actual placement as 'a' grade. He will take his chance along with other as per normal DPC rules.
It should also be stated that is only for promotion to supervisor 'B' and equivalent NI posts and this will not apply for consideration to Highly skilled grades."

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> "This notional seniority is not recommended for the purpose of promotion to highly skilled posts because we find that a large number of employees from the rank and files are available. They should be considered for highly skilled grades because of their age and experience and their claims should not be affected by any special consideration shown to the Ex.ATS boys."

14. It is therefore clear that notional seniority was only granted as a measure of giving relief to the workers who were stagnated and they were not recommended for promotion to the next higher grade of skilled post. The second respondent has been granted the notional promotion by way of the Chellam Committee and Pappachan Committee. Therefore, what has been extended by way of a goodwill gesture by the Department, cannot form the basis of the claim over and above the regular appointees who have been promoted by virtue of skill, efficiency and merit.

15. There is much force in the contention made by the petitioners that by virtue of getting notional seniority in 'A' Grade, the second respondent is claiming higher status which is contrary to statutory rules and orders (SRO). The argument of the Department is that the rights of persons regularly appointed in 'A' Grade cannot be affected by a person who claims seniority through higher grade only after obtaining notional seniority. The persons having obtained notional seniority should not be allowed to claim further higher status in higher grades, as it will affect the seniority of several persons who are already senior to them. The Tribunal has not considered one vital factor, in that the second respondent was given notional promotion to Supervisor 'B' (Technical) by proceedings dated 10.3.1997, whereas in the case of V.N.Dhanapalan, he had become Supervisor 'B' on 10.1.1972 itself by selection. This difference has not been considered by the Tribunal. The Tribunal also erred to state that the second respondent was given higher seniority in Supervisor 'B' (Technical) over and above the case of V.N.Dhanapalan. This is also factually incorrect as is evident from the chart extracted above.

16. The Tribunal has gone only on the ground that the notional promotion granted would entitle the second respondent to get the same benefit as that of V.N.Dhanapal. This finding of the Tribunal apparently is factually incorrect and contrary to law. The Tribunal has not taken into consideration the decision of the Jabalpur Bench of the Tribunal referred to above, which has been confirmed by the Supreme Court. The settled legal position has not been considered by the Tribunal that notional promotion does not entitle the person concerned with any right whatsoever. In

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any event, the second respondent cannot claim same parity with that of V.N.Dhanapal, who falls under different category of promotion. There is no question of treating unequals as equals, as has been sought to be done by the Tribunal.

17. In view of the above discussion, we find that the order of the Tribunal is clearly based on error of judgment. The writ petitioners are liable to succeed. The writ petition is allowed. No costs. W.P.M.P. and W.V.M.P. are closed.

cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. Union of India, Rep. by
   The General Manager,
   Heavy Vehicles Factory,
   Avadi, Chennai-600 054.

2. The Ordnance Factory Board,
   rep. by the Director General
   Ordnance Factories, Auckland Road,
   Calcutta.

3. The Secretary,
   Min. Of Defence,
   Govt. of India, New Delhi.

4. Central Administrative Tribunal,
   represented by its Registrar,
   High Court Buildings,
   Chennai-600 104.

+ one cc to Mr. K. Veeraraghavan, SCGC, SR NO. 9848
+ ONE CC TO MR. S. Sadasharam sr no. 9902

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